

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On July 17, 2006, petitioner was approved for temporary housing assistance. Petitioner signed an agreement with the Department that explained the petitioner had to use her available income towards her room rent at the motel and

that the caseworker would explain how much of petitioner's income needed to be used each time she applied.

3. The caseworker explained the 80 percent rule that the Burlington district office uses in emergency assistance cases. The emergency assistance regulations require recipients to use all their available income and resources before the Department pays emergency assistance. The Burlington district office has interpreted all available income to be 80 percent of income leaving recipients with funds for needs beyond housing.

4. The petitioner has been staying at the Vermont Maple Inn. As part of the emergency assistance requirements, petitioner sees Carol Czina, Department caseworker, twice a month to verify petitioner's housing search and to determine the amount of petitioner's Reach-Up Family Assistance (RUFA) grant that will be used for motel rent before the Department pays temporary housing costs. Petitioner receives food stamps in addition to the RUFA grant. As part of the emergency assistance requirements, petitioner receives case management services through Women Helping Battered Women.

5. Petitioner and Czina testified that they have a good relationship. With the exception of the issue before the hearing officer, petitioner had followed through with her

requirements to the Department. Czina helped with other referrals including a referral to Children with Special Needs. Since the petitioner's move, her son developed a seizure order whose etiology is unknown and that is not fully under control.

6. Petitioner testified that she understood the 80 percent rule and had followed the rule until the beginning of October 2006 when she made other expenditures from the 80 percent of her income set aside for housing.

7. On October 1, 2006, petitioner received \$363 from RUFA. The Department informed petitioner that she should apply \$290 towards her motel rent leaving her with \$73 for her other expenses. An appointment was set up for October 6, 2006. Petitioner's rent at the motel is \$50 per day.

8. Petitioner applied \$200 towards the motel rent on October 2, 2006.

9. Petitioner used the \$90 for other expenses including \$35 towards her cell phone bill, \$20 for cleaning supplies and \$45 for her son's school supplies (calculator, protractor, notebooks, pencils and folders). Petitioner did not supply receipts for the cleaning supplies or school supplies.

10. Petitioner purchased cleaning supplies after waiting for the motel staff to clean mold from her room. Petitioner was concerned that the mold was contributing to her son's seizure disorder. Petitioner and her son have since been moved into another room that is mold free. Petitioner reported that the motel is not renting her old room due to the mold.

11. Petitioner cancelled the October 6, 2006 appointment because her son was experiencing seizures.

12. Petitioner and Czina met on October 9, 2006. The Department refused to pay for temporary housing for October 9 and 10, 2006 because the petitioner had not used 80 percent of her income towards the housing expenses.¹

13. On October 10, 2006, petitioner testified that she went to Community Action seeking monetary assistance for the two night's temporary housing. The Community Action caseworker called in an expedited fair hearing for the petitioner. According to the petitioner, she was told that the 80 percent rule did not apply in temporary housing cases.

14. Petitioner and her son have continued to be housed at the Vermont Maple Inn during this time period. The

¹ Czina testified that she learned about the mold at this meeting. She felt that if she had known about the mold before, the Health Department could have been called.

petitioner and Czina scheduled an appointment after the expedited hearing to restart payment for temporary housing assistance on October 11, 2006.

ORDER

The Department's decision is affirmed.

REASONS

Families with dependent children can apply to the Department for help meeting their needs when they have no other way to meet those needs. Welfare Assistance Manual (W.A.M.) § 2800 *et seq.* In particular, homeless families can apply for temporary housing assistance to ensure that they will be housed while seeking permanent housing.

W.A.M. § 2813.2 states:

Temporary housing is intended to provide short term shelter (84 day maximum) for applicants who are involuntarily without housing through circumstances they could not reasonably have avoided and for whom permanent housing or alternative arrangements are not immediately available. "Could not reasonably have avoided" is subject to the limitation in 2802.1(4). Temporary housing, beyond 28 cumulative days in any consecutive 12-month period, is not an entitlement. . .

As a battered woman, petitioner meets the eligibility criteria as victims of domestic violence are considered to be constructively evicted. W.A.M. §§ 2802.1(4) and 2802.2. To

continue receipt, the petitioner needs to reapply for the assistance on a regular basis.

However, as a recipient of emergency assistance, petitioner is subject to the eligibility criteria found at W.A.M. § 2802.

Interpreting W.A.M. § 2802(2) is the crux of this case. As a condition of eligibility, the petitioner needs to exhaust "all available income and resources". In the regulations, available resources are defined as "cash on hand". W.A.M. § 2800.3(3). The regulations give discretion to the district director to determine what constitutes all "available income and resources". W.A.M. § 2805.

In many districts, "all available income and resources" has been defined to include 100 percent or close to 100 percent of all income and resources on hand, leaving applicants to ask for additional assistance through the general assistance or emergency assistance program if other needs arise.² In the Burlington district office, the district director has defined "all available income and

² The general assistance regulations track the emergency assistance regulations. W.A.M. § 2600 et seq. Past general assistance fair hearing decisions have affirmed the Department's determination that "all available income and resources" means all or close to all of the recipient's funds. Fair Hearing Nos. 16,597 (Department does not need to take step of allowing the recipient to retain funds for other needs since the recipient can seek further assistance for needs that may arise); 15,904; and 15,652.

resources" as 80 percent of the recipient's income, leaving 20 percent to cover other needs. In doing so, there is no indication that the Burlington district has foreclosed a recipient from seeking further assistance under other provisions of the emergency assistance program if the need arises.

There is no evidence that the Department's actions rise to an abuse of discretion in this case. The petitioner first received emergency assistance on July 17, 2006. During prior applications for temporary housing assistance, petitioner used 80 percent of her income for housing and the remainder of her grant for other needs. On October 2, 2006, petitioner did not use 80 percent of her income towards her housing. Petitioner paid a portion of her cell phone bill; the cell phone was an ongoing expense. Petitioner also used part of her monies for her son's school expenses and for cleaning supplies. There was no evidence that the petitioner looked for other avenues to pay these expenses or conferred with the Department about these needs to see if the Department could help her or make an adjustment to their rules.³

³ The petitioner's experience with the mold in her prior motel room raises a question whether the actual charges for the motel room should be adjusted for a breach of the warranty of habitability. Although the issue is beyond the scope of this fair hearing, it is hoped that the

The emergency assistance program is a program of last resort. Eligibility criteria are narrow; the expectation is that all available funds will first be used for housing. The Department acted within its authority to deny payment for two days of temporary housing assistance when they determined that the petitioner had not met her requirement to use all her available income and resources for housing. Although the Department denied these two days of assistance, the petitioner remained housed at the motel until the Department picked up the payment of the temporary housing once again.

Accordingly, the Department's denial of two days of temporary housing assistance should be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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petitioner with the help of the Department will look into whether the rent charged should be adjusted.